# RECENT IMPORTANT DECISIONS

ARREST—RIGHT OF OFFICER TO KILL WHEN SERVING WARRANT FOR MISDEMEANOR.—Defendant had a warrant for the arrest of one White, charging him with being drunk and disorderly. When the defendant served the warrant, White advanced upon him with an open knife. Although the defendant had a chance to escape through an open door, he shot and wounded White. In the prosecution of defendant for shooting and wounding White, it was *held* that the defendant was justified in shooting him. *State* v. *Dunning* (N. C., 1919), 98 S. E. 530.

The rule of the common law was that if an officer under the authority of a warrant attempted to arrest a felon, he was justified in killing the felon if he fled, but the officer could not justify the killing of a misdemeanant who fled. And, irrespective of the question of self-defense, if either the felon or misdemeanant resisted arrest, the rule was that the officer was justified in opposing force to force, even though the death of the persons resisting be the consequence. HALE'S PLEAS OF THE CROWN (Small's 1st Am. Ed.) 489; EAST, PLEAS OF THE CROWN (1716), 298; 4 COOLEY'S BLACKSTONE, 4th Ed., Vol. 2, 1348; 1 RUSSELL, CRIMES, (9th Am. Ed.) 893; CLARK, CRIMINAL LAW, 161-2. This view is supported on grounds of public policy and in justice to the officer. And the common law rule is in general followed by the later cases. *State* v. *Smith*, (felon resisted), (1905), 127 Ia. 534; *Brown* v. *Weaver*, (misdemeanant fled), (1898), 76 Miss. 7; *Head* v. *Marten*, (misdemeanant fled) (1887), 85 Ky. 480; *Commonwealth* v. *Rhoads*, (misdemeanant fled), (1903), 23 Pa. Supr. Ct., 512; *Lynn* v. *People*, (misdemeanant resisted), (1897), 170 Ill. 527; *State* v. *Dierberger*, (misdemeanant resisted), (1888), 96 Mo. 666; VOORHEES, LAW OF ARREST, 156-8. Among the modern cases there are authorities, however, holding that the officer is not justified in killing a misdemeanant who resists arrest unless in self-defense. *Dilger* v. *Commonwealth*, (dicta), (1889), 88 Ky. 550; *Smith* v. *State* (1894), 59 Ark. 132; *Clements* v. *State* (1873), 50 Ala. 117; *Holland* v. *State* (1909), 162 Ala. 5. That this rule may put the officer in a precarious position is shown in the *Clements Case, supra.* There the party resisting arrest had made threats on the life of the officer, and, though there was a conflict in the evidence, it tended to prove that the deceased had cocked and half drawn a pistol. The court said that this was a preparation to resist, an attitude of defiance, not amounting to an assault, which did not justify the officer's killing the deceased.

BILLS AND NOTES—CONFLICTING DUE DATES.—Payee sued the maker's executors on an instrument substantially as follows: "December 12, 1891. One day after date I promise to pay to the order of V. A. Zimmerman seven thousand dollars with interest from date, to be paid at my death. JAMES R. ZIMMERMAN." *Held*, plaintiff nonsuit. The uncertainty in due dates was incurable and unexplained. *Zimmerman* v. *Zimmerman* (Pa., 1919), 106 Atl. 198.

The plaintiff had no evidence to explain the ambiguity between the two inconsistent due dates or to indicate which one was intended. But the courts,

even in the absence of extraneous evidence, will attempt by judicial interpretation to give a reasonable meaning to all the terms of an instrument. *Washington County Bank* v. *Jerome,* 8 Mich. 490. To do this they will insert an omitted word. *Nichols* v. *Frothingham,* 45 Me. 220, where "months" was supplied after "six" in a note reading "six after date we promise to pay." Payments "on or before" a certain date are almost universally held enough to satisfy the requirement for certainty in the due date of a note. *Bank* v. *Skeen,* 101 Mo. 683. And "one day after date I promise to pay, or at my death" has been held sufficient to make a note collectable eleven years after the date on which made, the maker's death occurring at this latter time. *Conn* v. *Thornton,* 46 Ala. 587. The court might have held the instrument in the principal case a good note by implying the word "or" between the two dates, on analogy with these cases.

BILLS AND NOTES—HOLDER IN DUE COURSE—CHECK DEPOSITED WITH BANK FOR COLLECTION.—One White deposited a check for four hundred and forty dollars with plaintiff bank. The deposit slip on which the check was listed contained the provision that "Items other than cash are received on deposit with the express understanding that they are taken for collection only." Later White drew out his entire balance including the provisional credit. Payment on the check was stopped. *Held,* plaintiff was a holder in due course not subject to equitable defenses. *Old National Bank of Spokane* v. *Gibson* (Wash., 1919), 179 Pac. 113.

By the Laws of 1899, chapter 149, the State of Washington adopted the Uniform Negotiable Instruments Law. Under its provisions, the courts have extensively developed the question as to the rights of a bank in paper held for collection. *Washington Brick etc. Co.* v. *Traders Nat. Bank,* 46 Wash. 23. Where provisional credit only has been given and no money advanced, the general rule is that the bank has no interest in the paper, *Belshiem* v. *First Nat. Bank of White Salmon,* 77 Wash. 552; *Morris-Miller Co.* v. *A. Von Pressentin,* 63 Wash. 74. A like rule prevailed under the Law Merchant; *Lawson, Mann et al.* v. *Second Nat. Bank of Springfield,* 30 Kans. 412; *Manufacturers' Bank of Racine* v. *Newell,* 71 Wis. 309; *First Nat. Bank* v. *Nelson,* 105 Ala. 180. However, where the bank extends irrevocable credit and assumes responsibility for the paper, it has been treated as a holder in due course. *Wheeler etc.* v. *First Nat. Bank of Battle Creek,* 3 Tex. Ct. App. Civ. Cas. 192. Where advances made were in the nature of general credit extended and not on the strength of the paper deposited, the bank has been denied this protection. *American Savings Bank and Trust Co.* v. *Dennis,* 90 Wash. 547. But where money is advanced in one form or another on the faith of paper deposited for collection, the courts have quite generally considered the bank to be a holder in due course and entitled to recover as against latent equities. *City Deposit Bank* v. *Green* (Iowa) 103 N. W. 96, 130 Iowa 384, 106 N. W. 942; *Shawmut Nat. Bank* v. *Manson,* 168 Mass. 425 (decided prior to the adoption of the statute in Massachusetts); *Morrison* v. *Farmers and Merchants Bank,* 90 Okla. 697. The result in the instant